

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

GENERAL MOTORS CORP., et al
Debtors.

Case No. 09-50026-REG
Chapter 11
Jointly Administered

**RESPONSE BY THE DEPARTMENT OF TREASURY OF
THE STATE OF MICHIGAN TO
DEBTORS' SEVENTEENTH OMNIBUS OBJECTION TO CLAIMS**

Now comes the Department of Treasury of the State of Michigan (Michigan Treasury) by and through its attorneys, Michael A. Cox, Attorney General, and Kathleen A. Gardiner, Assistant Attorney General and files this limited objection to Debtor's Seventeenth Omnibus Objection to Claims. This objection is filed solely on behalf of the State of Michigan Department of Treasury and does not raise objections which other agencies of the State of Michigan may assert.

Debtors' Objections to proofs of claims 62066, 70125 and 68606 on the basis that the Tax Claims filed have been assumed by New GM pursuant to the Master Purchase Agreement are therefore not liabilities of MCL or the Debtors and should therefore be disallowed and expunged lack merit for the following reasons:

1. On June 1, 2009 a bankruptcy case for Debtors General Motors Corporation *aka* GMC Truck Division *aka* Automotive Market Research *aka* NAO Fleet Operations *aka* National Car Rental *aka* GM Corporation *aka* National Car Sales *aka* GM Corporation-GM Auction Department ("Debtors") was filed in the United States Bankruptcy Court for the Southern District of New York.

2. The case was assigned case number 09-50026-reg and was assigned to Judge Robert E. Gerber.
3. Debtors sought, and on June 1, 2009, the Bankruptcy Court entered, an Order Pursuant to 11 U.S.C. §§ 363(b), 507(a)(8), 541, and 105(a) Authorizing Debtors to Pay Prepetition Taxes and Assessments.
4. The above-referenced Order, inter alia, authorized "...the Debtors to pay, in their sole discretion, all Property Taxes, Sales Taxes, Use Taxes, Excise Taxes, Gross Receipts Taxes, Franchise Taxes, Business License Fees, Annual Report Taxes, and Other Governmental Assessments (collectively, the 'Taxes and Assessments') relating to periods prior to the Commencement Date, including any penalties and interest thereon determined to be owed for periods prior to the Commencement Date and all those Taxes and Assessments subsequently determined upon audit, or otherwise, to be owed for periods prior to the Commencement Date..."
5. On November 30, 2009, the State of Michigan Department of Treasury filed a Priority Proof of Claim in Case No. 09-50026 for unpaid Michigan Single Business Tax, unpaid Michigan Business Tax and unpaid Use Tax and interest due for taxing periods 2000 through May 31, 2009 in the amount of \$113,148,363.28. That Claim was given the claim number 62066. That Priority Claim was amended on March 12, 2010 to \$113,213,890.45 and that Amended Claim was given the claim number 70125.
6. On November 30, 2009, the State of Michigan Department of Treasury filed an Unsecured Proof of Claim in Case No. 09-50026 for penalty for unpaid Michigan

Business Tax for the taxing periods 2008 in the amount of \$1,438,499.60. That Claim was given the claim number 68606.

7. On July 5, 2009, United States Bankruptcy Judge Robert E. Gerber entered an Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief.
8. The §2.3 of the Amended and Restated Master Sale and Purchase Agreement by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers and NGMCO, Inc., as Purchaser, dated as of June 26, 2009 defined “Assumed Liabilities” to be assumed by purchaser NGMCO, Inc., and thereafter by General Motors Company *aka* General Motors, LLC, *aka* New GM, as follows, in pertinent part:
 - a. The “Assumed Liabilities” shall consist only of the following Liabilities of Sellers:

* * * *

(v) all Liabilities of Sellers (A) arising in the Ordinary Course of Business during the Bankruptcy Case through and including the Closing Date, to the extent such Liabilities are administrative expenses of Sellers’ estates pursuant to Section 503(b) of the Bankruptcy Code and (B) arising prior to the commencement of the Bankruptcy Cases to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order (and for the avoidance of doubt, Sellers’ Liabilities in clauses (A) and (B) above include Sellers’ Liabilities for personal property Taxes, real estate and/or other ad valorem Taxes, use Taxes, sales Taxes, franchise Taxes, income Taxes, gross receipt Taxes, excise Taxes, Michigan Business Taxes and Michigan Single Business Taxes), in each case...

9. On May 27, 2010, Debtors filed a Notice of Debtors' Seventeenth Omnibus Objection to Claims (Tax claims Assumed by General Motors, LLC). Therein, Debtors, inter alia, indicated the following:

"The Debtors have examined the proofs of claim identified on Exhibit A hereto filed by certain taxing authorities (collectively, the "**Taxing Authorities**") and have determined that the proof of claim listed under the heading "*Claims to be Disallowed and Expunged*" (collectively, the "**Tax Claims**") are claims related to tax liabilities that have been assumed by General Motors, LLC ("New GM") pursuant to the terms of that certain Amended and Restated Master Sale and Purchase Agreement (the "**Master Purchase Agreement**"), dated as of June 26, 2009, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation, Chevrolet-Saturn of Harlem, Inc., and New GM. The Tax Claims have been assumed by New GM pursuant to the Master Purchase Agreement and are therefore not liabilities of MLC or the Debtors and should therefore be disallowed and expunged."

10. Counsel for the Michigan Department of Treasury, having raised the concern that without specific clarification the disallowance and expungement of the Michigan Department of Treasury's claims in the bankruptcy case might leave it open for General Motors Company *aka* General Motors, LLC *aka* New GM to argue that the Michigan Department of Treasury claims had not met the requirements for assumption of liability by General Motors Company *aka* General Motors, LLC *aka* New GM under the language of the Amended and Restated Master Sale and Purchase Agreement (specifically under the clause "to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order") and that by allowing the disallowance and expungement of its claims in the Bankruptcy case, the Michigan Department of Treasury might be risking the extinguishment of its entitlement to payment from General Motors Company *aka* General Motors, LLC *aka* New GM and at the same time risk extinguishing the Bankruptcy Court's jurisdiction over the

assumed above-described tax liabilities, requested Debtors to agree to the following clarification:

WHEREFORE, General Motors Company *aka* General Motors, LLC *aka* New GM, and the Michigan Department of Treasury, by and through their respective Counsel, agree to the following:

1. The Final Order referred to by the language of the Amended and Restated Master Sale and Purchase Agreement and specifically within the clause "to the extent approved by the Bankruptcy Court for payment by Sellers pursuant to a Final Order" relates to the Court's June 1, 2009 Order Pursuant to 11 U.S.C. §§ 363(b), 507(a)(8), 541, and 105(a) Authorizing Debtors to Pay Prepetition Taxes and Assessments, that the Bankruptcy Court has therefore approved Debtors' prepetition tax liabilities for payment, and that therefore Debtors' prepetition tax liabilities to the Michigan Department of Treasury have been assumed by General Motors Company *aka* General Motors, LLC *aka* New GM.
2. General Motors Company *aka* General Motors, LLC *aka* New GM acknowledges that it has assumed Debtors' prepetition tax liabilities to the Michigan Department of Treasury subject to its rights as a taxpayer to review and dispute tax claims with the Michigan Department of Treasury in the ordinary course pursuant to Michigan law.
3. Upon execution of this agreement, the State of Michigan will withdraw its claims numbers 62066, 68606 and 70125.

And although Counsel for General Motors Company has shown every courtesy and made verbal assurances that the parties can reach agreement, nevertheless time grows short for responding to the Debtors' Seventeenth Omnibus Objection so that Michigan Department of Treasury must file this response in order to preserve its claims 62066, 70125 and 68606.

WHEREFORE, the Michigan Department of Treasury respectfully request that this Court not disallow and expunge its claims 62066, 70125 and 68606 until and unless the parties can reach an agreement clarifying the assumption of the underlying tax liabilities by General Motors Company aka New GM.

Respectfully submitted,

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Dated: June 22, 2009